

1 MS. SHETLER: Okay. So you issue an order
2 for Verizon to actually physically disconnect the
3 cross-connect?

4 MR. FERRIO: Disconnect the cross-connect
5 and also the UNE loop that goes to the customer, so
6 that -- because Verizon is billing us for that loop,
7 not our individual customer. Cavalier bills our
8 customer. So we have to get Verizon to take that
9 off of our bill.

10 MS. SHETLER: Is there any sort of
11 physical -- like as opposed to electronic
12 coordination of your systems and information
13 systems, is there a physical coordination that goes
14 on between the companies to effect the physical
15 disconnect?

16 MR. FERRIO: No, Verizon has a GUI that we
17 interface with, get into the Verizon GUI and issue
18 the LSR that way.

19 MR. LERNER: Whatever they do, they do
20 unilaterally on their side.

21 MR. FERRIO: Correct, correct.

22 MR. LERNER: Whatever physical activity

1 that has to be taken with the loop.

2 MR. FERRIO: Correct. We coordinate a cut
3 date for the customer when they want to migrate the
4 service back.

5 MS. SHETLER: You coordinate with Verizon
6 on setting the date that the transfer will occur.

7 MR. FERRIO: That's correct. And we have
8 a technician standing by, because when they do, we
9 have to pull the porting out of our switches so the
10 number ports back to Verizon switches.

11 MR. LERNER: Did I understand you said
12 part of that you got charged by Verizon for?

13 MR. FERRIO: That's correct. Every time
14 we issue an LSR for anything, we get charged by
15 Verizon, whether that's a change, a disconnect, or a
16 new. So when we initially order the loop from
17 Verizon, we got charged for the UNE, because it's a
18 new order.

19 If we change that order any time during
20 the process of the life cycle of that loop, we get
21 charged when we issue the LSR for it. Then when we
22 finally lose that customer back to Verizon, they

1 charge us again for the LSR to disconnect that loop,
2 as well as taking the customer.

3 MR. LERNER: Do you agree, Verizon, do
4 they get charged for that?

5 MS. CLAYTON: For the various activities?

6 MR. LERNER: For -- when they have -- when
7 there's a customer that Verizon wins back from
8 Cavalier, they have to issue an LSR to you to
9 effectuate that win-back. Are they charged for that
10 LSR in that situation?

11 MS. CLAYTON: Verizon does not charge for
12 win-backs. I think what Cavalier said is they have
13 an unbundled loop that they're provisioning service
14 over. If Cavalier disconnects that unbundled loop,
15 in Virginia I believe there has been a
16 commission-approved charge for a disconnect of an
17 unbundled loop, yes.

18 MR. LERNER: So they are charged for the
19 disconnect and the LSR associated with that
20 disconnect when you've won a customer back; correct?

21 MS. CLAYTON: We don't charge for
22 win-backs --

1 MR. LERNER: I don't care whether -- you
2 may not charge for win-backs, but the question is
3 whether you're charging them an LSR --

4 MR. FERRIO: They call it a service order
5 charge, sir.

6 MR. LERNER: Are you charging them a
7 service order charge for the activity that they have
8 to request you to do in order for them to give you
9 the customer back that you want?

10 MS. CLAYTON: There is a disconnect charge
11 for an unbundled loop.

12 MS. SHETLER: Is that a yes?

13 MS. CLAYTON: We do charge for the
14 disconnect of an unbundled loop.

15 MS. SHETLER: When that --

16 MR. LERNER: Even if it's being
17 disconnected because the customer is returning to
18 Verizon?

19 MS. CLAYTON: Yes, that could be the case.

20 MR. LERNER: When you say you don't charge
21 for win-backs, what else would you be charging for
22 associated with a win-back that you're not charging

1 for?

2 MS. CLAYTON: As I said, there's a lot of
3 activity that goes into a win-back on either side.
4 Porting of the number, translations-type work. In
5 some cases, one party or the other might have to do
6 E911 or DA-type work. We do not charge for those
7 activities.

8 MR. LERNER: You don't charge Cavalier.

9 MS. CLAYTON: Correct.

10 MS. SHETLER: But you do charge your new
11 customer a charge for setting things up?

12 MS. CLAYTON: I'm sorry? Ask that again.

13 MS. SHETLER: I'm not sure if this is
14 relevant or not, but I'm just going to ask the
15 question anyway, is that you do charge, when you
16 have a new customer, as a new -- there is an end
17 user charge for, I think, all carriers, they're
18 charging an end user for initiating service that
19 covers many costs of setting up service.

20 MS. CLAYTON: There's a nonrecurring
21 charge, yes, for the establishment of service.
22 Again, I don't have cost studies here in front of me

1 so I can't tell you all the various cost elements
2 that go into it.

3 MS. SHETLER: Right.

4 MS. DAILEY: Let me ask a question.

5 Mr. Agro, does the Virginia performance
6 assurance plan reimburse Cavalier for dispatching
7 technicians or processing win-back orders?

8 MR. AGRO: It would be for processing
9 win-back orders. The plan can -- you can reimburse
10 for dispatching in certain cases. I mean, there are
11 measures in the plan for things like missed
12 appointments, troubles on new installations, repeat
13 reports. And if Verizon doesn't meet the parity
14 standards, I think -- most of the parity standards
15 except in the case of hot cuts, there are benchmark
16 standards. If Verizon doesn't meet the standards
17 for the amount by which it doesn't meet the
18 standards, truck rolls or dispatches after that, the
19 compensation in the plan is based on a
20 per-transaction basis.

21 So, for example, if Verizon missed on a
22 parity measure, Verizon had 5 percent missed

1 appointments for its retail customers and 15 percent
2 missed appointments for Cavalier customers, the
3 difference between the two, 10 percent, times the
4 number of Cavalier orders, or Cavalier appointments,
5 those would be reimbursed by the plan.

6 In other words, I shouldn't say
7 reimbursed. Those would be -- by the amounts
8 designated in the plan, it would be times those
9 number of transactions.

10 MS. DAILEY: But the performance assurance
11 plan does not reimburse Cavalier for the first
12 missed appointment by Verizon?

13 MR. AGRO: If Verizon had perfect
14 performance on its own, no missed appointments? In
15 that case, the first appointment would be
16 reimbursed.

17 MS. DAILEY: Has that happened yet?

18 MR. AGRO: I don't know off the top of my
19 head. I'd have to check.

20 MS. DAILEY: We want to ask a question --
21 well, I'm actually going to ask it of both witnesses
22 because I'm not really sure.

1 This concerns Ms. Webb's Exhibit 5, which
2 is -- and I think Verizon has objected to this.
3 This is a letter to CLECs, I believe, concerning
4 charges related to UNE loops. And it concerns some
5 back billing that Verizon intends to do in certain
6 states, but Virginia is not listed as one of the
7 states.

8 And so my question is, is Verizon
9 intending to bill -- back bill for these charges in
10 Virginia, to the knowledge of either -- any of the
11 witnesses? Has anybody -- does Verizon have
12 knowledge about this?

13 MS. CLAYTON: Whether charges are going to
14 be back-billed in Virginia? I'm not aware of that.
15 I'm not going to say it's not going to happen. I'm
16 just not aware of it. I'm not involved in this
17 activity.

18 MR. AGRO: I'm not aware of it.

19 MS. DAILEY: Have any of the Cavalier
20 witnesses been informed by Verizon that back-billing
21 is going to occur for these charges?

22 MR. CLIFT: We've --

1 MS. WEBB: Yes. I mean, we've gotten
2 this -- we got the document, and we were notified
3 that there would be possibly some back-billing that
4 would occur.

5 MS. DAILEY: For Virginia?

6 MS. WEBB: No, ma'am, you're right. And I
7 didn't realize until later that this -- Virginia
8 wasn't in here. Some of our footprint is in here,
9 but you're absolutely right, Virginia is not on this
10 particular document, that's correct.

11 MS. DAILEY: Verizon, can you just let us
12 know if Virginia is going to be one of the states
13 that's going to be included in back billing so
14 Cavalier will have notice of that? And we'd like to
15 know as well.

16 Just one last question, Cavalier. What
17 percentage of the time when Verizon delivers a loop
18 do you have a situation where you've got -- there's
19 the requirement of some kind of a premises visit?

20 MS. WEBB: I've got it in here somewhere.
21 47 percent or -- 40.7 percent.

22 MS. DAILEY: 40.7 percent of the time --

1 MR. CLIFT: That was trouble not found.

2 MS. WEBB: I don't have the document.

3 MR. CLIFT: Let me give you some broad
4 statistics.

5 MS. DAILEY: Be clear on what you're
6 giving me exactly, please.

7 MR. CLIFT: I will. I will. We've looked
8 into this, is that our loop installs run roughly
9 anywhere from 5000 to 6000 per month, of which 50
10 percent is a new loop and 50 percent is hot cut.

11 So let's just take on average that we
12 install 3000 new loops per month, and we've
13 identified testimony that roughly 350 or a little
14 over 1 percent -- well, it's a little over 10
15 percent of that requires a truck roll.

16 MR. LERNER: Is there testimony for
17 Mr. Ferrio to be offered in evidence?

18 MR. PERKINS: Yes, there is. Cavalier
19 moves the admission of Mr. Ferrio's testimony,
20 direct testimony as Exhibit C-21, and rebuttal
21 testimony as Exhibit C-22.

22 MR. LERNER: As to Mr. Agro?

1 MS. NEWMAN: It's already in.

2 MR. LERNER: That's in, all right. That's
3 admitted.

4 (Exhibits C-21 and C-22 received.)

5 MR. LERNER: That concludes the witness
6 testimony. All the witnesses are excused, and after
7 a short break, we'll reconvene here with just the
8 lawyers at 3:45.

9 (Recess.)

10 MR. LERNER: I think the main thing we
11 have to discuss is the state of the JDPL and what
12 might get submitted into the formal record in that
13 regard. Terry, do you want to --

14 MS. NATOLI: I'll briefly explain it and
15 we'll get into our issue. When the petition was
16 filed, it included a document that was purported to
17 be from Cavalier, the agreement as of that point,
18 with all the changes that the parties had been
19 negotiating as represented in the issues that
20 Cavalier raised, and then in the answer and
21 response, Verizon responded to that, and the answer
22 and response identified or should have identified

1 anything in that that was in disagreement or, you
2 know, wasn't -- but anyway, nevertheless, nothing
3 was identified in whatever.

4 So we take that document, thought that
5 document was the document going forward that we were
6 deciding between the language. Then when we got the
7 JDPL, the first JDPL, what we thought was on there
8 and expected to be on there was simply the parties,
9 both parties, just synthesizing the language that
10 was in dispute at the time the arbitration agreement
11 was filed, what was in the agreement that had been
12 added by Cavalier or added by Verizon that Cavalier
13 didn't want or vice versa, and then all the other
14 information, the summary information.

15 And then the revised JDPL, what we had
16 expected was simply any additional factual material
17 or whatever that had occurred between the parties
18 since then, any issues that had gotten taken off the
19 table or any subissues within an issue that had been
20 subsequently resolved, such that the language
21 pertaining to that particular issue was no longer in
22 dispute.

1 And it wasn't until this week, when we
2 were preparing this and using those documents --
3 well, as a tool, that we realized that there was
4 different language, and we, frankly, haven't looked
5 at the whole document and compared everything, all
6 three.

7 But we realized that for several issues,
8 there was new language or additional or different
9 language in the revised JDPL from the JDPL and, in
10 some cases, different language in the JDPL from
11 actually what was in that original agreement.

12 So that's where we find ourselves today,
13 and we realize we need to do something to address
14 that issue.

15 MR. LERNER: Okay. So what we are
16 proposing to do is that our starting point for a --
17 what we want to have filed with us by close of
18 business Tuesday is a final JDPL, and what the final
19 JDPL should have in it is the language -- the
20 different language or sections of the agreement
21 proposed by each party, where there's a difference,
22 as back in August when Cavalier first filed.

1 There can be changes made by parties to
2 what they are offering to reflect evolution of their
3 position some, but only if that change has been
4 identified to the other party and the other party
5 has agreed to allow the changed language to be that
6 which is before us.

7 So the way we suggest proceeding on this
8 is that by close of business Monday, Verizon should
9 give to Cavalier and Cavalier should give to Verizon
10 any changes in the language that either side might
11 be proposing that is different from what they put
12 forward on August 1 and in the answer.

13 MS. NATOLI: In the answer response.
14 Because unless there was a particular section
15 identified in the answer and response, then it
16 shouldn't have been on the JDPL -- I mean, it -- we
17 didn't have knowledge or weren't aware that it was
18 on the JDPL, because the answer and response --

19 MR. LERNER: So by close of business
20 Monday, Verizon should give to Cavalier its list of
21 any language that is different from in the answer
22 response, and a list of what those are, and

1 Cavalier, give the same, anything that's different
2 from your August 1 -- is August 1 the right date?

3 MS. NATOLI: Yes, August 1.

4 MR. LERNER: The petition. I don't know
5 if there is any or not. And then by close of
6 business or sometime Tuesday, 4:00 or whatever, or
7 you can agree on a time that gets it so that you
8 can -- whatever time is necessary so that if you --
9 whatever -- if you agree that, you know, there's
10 five items that a party -- that one party wants to
11 make a change to what their proposal is and the
12 other party needs to say, yes, you know, 1, 2, 3 and
13 4, we're willing to have the commission consider
14 that changed language. But issue 5, no, we want to
15 hold you to where you were back on August 1 in the
16 answer response, so that we can have the final JDPL
17 to us by close of business Tuesday.

18 I don't know if you want to talk --
19 propose what time you might need to -- if you can
20 exchange by close of business Monday the first piece
21 of that, when you need to get the answers back to be
22 able to get a final JDPL to us by close of business

1 Tuesday.

2 MR. MILLER: This is not supposed to be a
3 reopening of negotiation and massive movements of
4 language. The goal is to allow -- to have the
5 parties just identify which language is not a
6 distillation from their initial -- I'm sorry, from
7 their last best offers or whatever came in on August
8 1 or the response thereto, but where the language
9 was beyond the language -- the last best offer
10 language, to identify what the new language is and
11 how proposed contract language may have changed, and
12 the other side to approve it or reject.

13 MR. LERNER: By approving, we don't mean
14 you're approving the language and you want it in the
15 agreement, but you approve that it's appropriate for
16 us to consider it.

17 MR. PERKINS: Agree to include it in --

18 MS. NATOLI: If I just may add, and I just
19 want to make sure that we're doing the thing that we
20 intend here and not starting a new process, for
21 example, and this is the best way to explain it.
22 The issue that arose this week where there was new

1 language that was proposed to section 11.7.6 that
2 Cavalier had never seen that went to address an
3 issue in dispute with respect to 11.2, if that
4 change to 11.7.6 had been raised in the answer
5 response and said this is our counter language to
6 this, it would be properly -- have properly been
7 before us in that first JDPL. But it wasn't
8 identified. It just said there was -- you know,
9 okay.

10 And then the second thing would be if the
11 parties have -- and it sounded like from today that
12 there have been some things that have been raised
13 in, for example, Cavalier, your proposed language,
14 where you've come to agreement. That needs to be
15 identified for us.

16 All we really need in the JDPL is the
17 actual sections of the agreement that are in
18 dispute. You know, we don't really need the entire
19 section 11.2, if that whole section is not in
20 dispute, only a little teeny section of it. Because
21 we're trying to see -- you know, we just want
22 identified for us what the parties can't agree to in

1 a particular section at this point.

2 MR. LERNER: And before you talk to one
3 another about what time, we'll want a clean copy of
4 the final JDPL and then a red line of that, or not a
5 red line, something that shows on another version of
6 the document what things are different from --

7 MS. NATOLI: From the original agreement.

8 MR. LERNER: -- the original agreement,
9 just so we know.

10 Do you have questions?

11 (Laughter.)

12 MS. NATOLI: We're not surprised.

13 MS. NEWMAN: I don't know that there's
14 going to be -- I think the issue that was raised by
15 Mr. Perkins earlier this week, I'm hoping that's the
16 only example.

17 MR. PERKINS: I think so.

18 MS. NEWMAN: I don't know that there's
19 going to be any disagreement about -- or any claim
20 of surprise. I think if there were, you would have
21 heard about it already.

22 MR. LERNER: Right. And I think there

1 were other changes, but I think that they were just
2 reflecting the status of the negotiations and where
3 the negotiations had moved to since August 1.

4 MS. NEWMAN: I think so, too. And both
5 sides have done that.

6 MR. LERNER: That's why we don't want to
7 keep any of that out, and as long as both parties
8 have agreed that, you know, yes, the negotiations
9 have gotten this far and that's why we're setting up
10 the mechanism, that's why we thought, well, if you
11 could get -- exchange the list and identify it on
12 each side, look at it and sign off that they're in
13 agreement, that seemed to us to be the best way to
14 move forward.

15 MS. NEWMAN: I guess my question is
16 probably premature, we should wait and see if
17 there's going to be a disagreement.

18 MR. PERKINS: I think you're right. I
19 think that was the only one where there was
20 friction.

21 MS. GRILLO: We've been talking even on
22 what we submitted, so I don't think there will be.

1 We'll just have to figure out the best way --

2 MR. PERKINS: The more problematic part to
3 me seems to be the red line. I'm not sure how easy
4 that will be to create.

5 MS. NEWMAN: We'll have to red-line --
6 probably red-line the two documents on a separate
7 thing and then import it into the cell, into the
8 chart.

9 MS. SHETLER: I think we want two separate
10 documents.

11 MR. LERNER: One clean JDPL, final JDPL,
12 setting forth what all the proposed language is by
13 both parties. I think we're somewhat open to
14 hearing what the parties can get together that's
15 least burdensome on them that would provide us with
16 the function we're looking for, whether it be a
17 red-line JDPL or perhaps submission of where the
18 contract stands right now, perhaps red-lined to
19 where it was on August 1.

20 We're somewhat flexible on that.

21 MR. PERKINS: Red-lining the language in
22 the JDPL should not be problematic, but a red-line

1 of the entire contract would be a little bit
2 difficult to create.

3 MS. NATOLI: With the contract now, if we
4 said to you today, what is the state of the contract
5 right now, what we got before was an e-mail in
6 various different colors that we tried to figure out
7 who the person was that added the change and what
8 the date was, and we could pretty much tell it was
9 up to the day before the petition was filed.

10 Now, I'm assuming there's a document that
11 exists today that actually is that same document but
12 with several other additional changes. Or no?

13 MS. NEWMAN: Maybe not. I'd have to check
14 with Jim. Oftentimes we just exchange proposals by
15 section, so it wouldn't be the entire -- we just
16 draft something up, ship it over, then later to be
17 incorporated.

18 So I don't know that all the proposed
19 changes that have been exchanged in the last month
20 or two have been incorporated into a master
21 document. That's not to say we couldn't do that by
22 Tuesday, but I'm not sure I could hand it to you

1 today.

2 MR. PERKINS: Excuse me, I didn't mean to
3 interrupt.

4 MS. NEWMAN: No, go ahead.

5 MR. PERKINS: I don't think there's a
6 working red-line draft. I think that we've
7 exchanged sections, like Kim said. Maybe the JDPL
8 would be a good place to show the proposed red-line
9 changes, if that would be workable.

10 MS. ZACHARIA: I'd have to check, but I
11 would bet that the original JDPL has some changes
12 from the August 1 and August 21.

13 MR. LERNER: Right. That's part of the
14 problem.

15 MS. ZACHARIA: Let me just ask one
16 question. Do you want to have this whole
17 conversation on the record?

18 MR. LERNER: For now, yeah.

19 MS. ZACHARIA: If so, that's fine. Okay.
20 The easiest way to do this, if it would work for
21 you, may be to give you a new red-line of the entire
22 document, but it would be a little complicated to

1 do, because we're going to have conflicting language
2 at some points.

3 See, so I'm not quite sure. So maybe we
4 need to think -- I mean, I think we understand what
5 you're looking for. You want to see if an issue has
6 changed three times, if Cavalier has had three
7 different sets of language or if Verizon has had
8 three different sets of language.

9 MR. LERNER: We're less concerned with
10 seeing whether there's three different sets, as what
11 it is now versus it started.

12 MS. NATOLI: And making sure that what we
13 get now, both parties know what it says, and that's
14 what they intend us to choose between.

15 MS. SHETLER: We want the last -- the
16 actual last best offer on paper.

17 MR. PERKINS: We need to agree on what is
18 in dispute.

19 MR. LERNER: You do, so we can tell what's
20 in dispute, and so we can also then see for
21 comparison purposes how that changed from --

22 MS. DAILEY: I mean, if I could just

1 state, frankly, I was prepared to ask some questions
2 about certain language and discovered yesterday
3 morning that I was looking at the wrong language. I
4 don't want to have to -- I mean, I think that the
5 party -- it's incumbent on the parties to tell us
6 that the language has changed. I don't want to find
7 that out through my own research.

8 So that's part of the function of this.

9 MR. LERNER: And then once the final JDPL
10 is submitted, that will become part of the record.

11 MS. NATOLI: Yeah, then that's what we
12 will put -- you know, we'll base our decisions on
13 the language that that reflects.

14 MR. LERNER: And if it's not in there, it
15 won't be decided.

16 Anything else from us?

17 MS. NATOLI: Off the record now.

18 (Whereupon, at 4:06 p.m., the hearing was
19 concluded.)

20

21

22